

July 5, 2011

The Honorable Patrick J. Tiberi, Chair
The Honorable Richard E. Neal, Ranking Member
Subcommittee on Select Revenue Measures
Committee on Ways and Means
U.S. House of Representatives
1101 Longworth House Office Building
Washington, D.C. 2015

Dear Chairman Tiberi and Ranking Member Neal:

We are submitting this letter for the record of the Subcommittee's hearing on June 23, 2011 on "Tax Reform and Foreign Investment in the United States." We write to underscore our policy and legal concerns with a number of proposals to dramatically increase taxes on the use of foreign affiliated reinsurance, including the proposal contained in the Administration's FY 2012 Budget. We believe that such proposals violate U.S. obligations under the World Trade Organization's ("WTO") General Agreement on Trade in Services ("GATS"). Many such proposals are discriminatory in nature, or impose conditions on access to the U.S. market that are incompatible with U.S. commitments. Enacting such proposals would leave many critical U.S. export sectors vulnerable to WTO-authorized retaliation. It would also damage the ability – and credibility – of the U.S. in its efforts to open foreign markets to U.S. insurance and reinsurance services. Finally, restricting the supply of reinsurance products would cause harm to U.S. insurance consumers in certain regions of the country and key sectors of the U.S. economy.

It is possible for the U.S. to utilize the exception in the GATS from national treatment obligations if the measure is merely to safeguard the member's tax base. However, to qualify for the exception, any measure cannot apply (as the GATS states) "in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services."

As a practical matter, this means that a proposal cannot arbitrarily restrict competition and protect domestic servicers. Any proposal must legitimately distinguish between normal risk management practiced by all insurance companies and activity driven solely by inappropriate tax behavior. It must also take into account taxes paid in the home country of the foreign reinsurer, so as to actually determine whether any tax incentives actually exist. And because any reinsurance is the movement not only of premiums but also risk (i.e., the future possibility of profits or losses), any proposal must account for claim payouts in a non-discriminatory fashion.

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At a time when the U.S. is rightly pressing a number of emerging markets to maintain competition in the insurance sector, meeting our WTO commitments in the financial services arena is critically important. In addition, these are the export markets the U.S. needs to meet the President's goal of doubling U.S. exports.

In short, now is not the time to have a retreat in global U.S. leadership in the services sector. Whether it is in the context of "pay-fors" for any number of worthy legislative proposals, or as a part of a larger reform of the U.S. tax code, WTO obligations and the U.S. commitment to competition should bear heavily in any analysis. We hope and trust you will keep these considerations in mind.

With best regards,

A handwritten signature in black ink, appearing to read "Mickey Kantor". The signature is fluid and cursive, with the first name "Mickey" written in a larger, more prominent script than the last name "Kantor".

Mickey Kantor

A handwritten signature in black ink, appearing to read "Susan C. Schwab". The signature is written in a cursive style, with the first name "Susan" and the last name "Schwab" being clearly legible.

Susan C. Schwab